



National Veterans Affairs and Rehabilitation Commission

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### **PTSD Class Action Lawsuit-Lawyers Serving Warriors**

A recent development in the class action lawsuit, *Sabo v. United States*, will likely result in the payment of millions of dollars in financial benefits and improved healthcare for thousands of Iraq & Afghanistan veterans diagnosed with posttraumatic stress disorder (PTSD) and their families. *Sabo v. United States* was filed in December 2008 on behalf of seven veterans by the non-profit NVLSP under the Lawyers Serving Warriors program, and pro bono counsel Morgan Lewis & Bockius LLP.

The lawsuit alleges that between December 17, 2002 and October 14, 2008, the military illegally denied benefits to an entire class of service members who returned from Iraq and Afghanistan with PTSD and were discharged from service due to the PTSD. The disability ratings which are the subject of the lawsuit are critically important to veterans with PTSD. A permanent disability rating of 30% or more by the military constitutes medical retirement and entitles a veteran to monthly disability benefits for the rest of the veteran's life, to free health care for the veteran and his or her spouse for life, and to free health care for their minor children.

For years, the law has required the military to assign a disability rating of at least 50% to all veterans medically discharged for PTSD. In October 2008, the Department of Defense (DoD) ordered the military to assign a 50% rating for PTSD going forward. However, the plaintiffs in the *Sabo v. United States* lawsuit received a rating of 10% or less prior to the October 2008 DoD mandate.

Veterans must meet all of the following criteria to be eligible for this class action settlement:

All individuals who

- served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force,

- were found by a Physical Evaluation Board to be unfit for continued service due, at least in part, to the individual's PTSD,
- were assigned a disability rating for PTSD of less than 50%, and, as a result,
- were released, separated, retired, or discharged from active duty after December 17, 2002, and prior to October 14, 2008 (regardless whether such release, separation, retirement, or discharge resulted in the individual's placement on the Temporary Disability Retirement List).

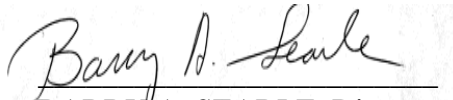
Veterans who suffer from PTSD from any in-service trauma which resulted in their medical separation during the affected period are eligible. For example, those veterans who suffer from PTSD as a result of a sexual assault, a car accident, witnessing a fatality, fire or other traumatic event may be eligible, and may not be aware as it falls outside of the more visible subgroup of combat participants who are suffering from PTSD. Veterans who believe they meet these criteria should contact the Lawyers Serving Warriors project through the website: [www.ptsdlawsuit.com](http://www.ptsdlawsuit.com). Veterans must contact the project no later than July 24, 2010 to be eligible. It is estimated that over 4,300 veterans may qualify under this class action.

While this lawsuit is solely for veterans suffering from PTSD as a result of a traumatic event in service, a larger group of veterans may need to check their ratings to ascertain that they were properly awarded benefits. The pertinent portion of the Code of Federal Regulations (38 CFR § 4.129) states that:

*"When a mental disorder that develops in service as the result of a stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50% and schedule an examination within a six month period following the veteran's discharge to determine whether a change in evaluation is warranted".*

Thus mental conditions other than PTSD, such as an adjustment disorder or depression, could be considered under this regulation. While such veterans would not qualify under this specific lawsuit, if this regulation was improperly applied, they should contact a Department Service Officer to determine the best course of action in rectifying the situation

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 BARRY A. SEARLE, Director  
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